

STATE OF MICHIGAN
COURT OF APPEALS

GARRATT & BACHAND, PC,
Plaintiff-Appellee,

UNPUBLISHED
May 18, 2010

v

ERIC E. FOGG, ALPHONSE LEWIS, JR. and
SONIA W. LEWIS,

No. 286439
Lake Circuit Court
LC No. 02-005702-CH

Defendants-Appellants,

and

ROBERT A. HILTS,

Defendant.

Before: MARKEY, P.J., and ZAHRA and GLEICHER, JJ.

PER CURIAM.

Defendants Eric Fogg, Alphonse Lewis, Jr.,¹ and Sonia Lewis (“defendants”) appeal by right the trial court’s June 12, 2008 order granting plaintiff’s motion to enforce an October 21, 2002 order and quieting title to certain property in favor of plaintiff. We affirm.

Defendants first argue that the trial court exceeded its authority by enforcing the October 21, 2002 order and quieting title in plaintiff’s favor. We disagree. The extent of a court’s authority is a question of law we review de novo. *Harvey v Harvey*, 470 Mich 186, 191; 680 NW2d 835 (2004). Regarding a grant of equitable relief, we review a trial court’s factual findings for clear error, “but whether equitable relief is proper under those facts is a question of law that an appellate court reviews de novo.” *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 197; 747 NW2d 811 (2008).

¹ Plaintiff Lewis is deceased, and there has been no personal representative substituted in his stead; consequently, he is dismissed as a party to this appeal.

After securing a judgment against plaintiff's predecessor in interest, America Nelson, defendants Alphonse Lewis, Jr., ("Lewis") and Sonia Lewis obtained a writ of execution for certain properties, including two parcels that are the subject of this appeal, and then purported to buy the properties at a sheriff's sale. Plaintiff, believing it had a superior claim to the property pursuant to a quitclaim deed from Nelson, filed this lawsuit. The lower court issued a preliminary injunction "until this matter is completely resolved," and further ordered that the subject property not be encumbered or transferred in a manner that would impair plaintiff's interest in the subject property until after the final adjudication of this action. In an order entered October 21, 2002, the court granted plaintiff's motion for summary disposition. The order nullified the execution sale and certificate of sale, but did not specifically quiet title in plaintiff. Defendant Lewis filed a claim of appeal with this Court on November 12, 2002. Plaintiff filed a motion to clarify the order. The lower court refused to clarify the order until it obtained either (1) an order of this Court, or (2) a stipulation filed by the parties as required by MCR 7.208. This Court dismissed the appeal for lack of jurisdiction because Lewis had assigned his interest in the property to appellant Fogg, and therefore was not an aggrieved party. See *Garrant & Bachand PC v Fogg*, unpublished order of the Court of Appeals, issued October 29, 2003 (Docket No. 244954).

Both plaintiff and Lewis interpreted the October 21, 2002 order to benefit their respective purposes. Lewis initiated a second sheriff's sale in 2003 in accordance with the original writ of execution and purportedly obtained various properties, including the subject property, for a total purchase amount of \$157,610. On the other hand, plaintiff believed its quitclaim deed was valid and sought to enforce it in Nelson's bankruptcy action. Thereafter, the court granted plaintiff's motion to enforce the October 21, 2002 judgment, nullified the 2003 sheriff's sale as it related to the subject property, and extinguished any rights that defendants had to the property.

The question before us is whether the trial court had the authority to enforce its October 21, 2002 order. We conclude that it did. "A court possesses inherent authority to enforce its own directives." *Walworth v Wimmer*, 200 Mich App 562, 564; 504 NW2d 708 (1993). In fact, the trial court has the *responsibility* of enforcing its orders, and "has considerable discretion in choosing the means to be employed." *Band v Livonia Assoc*, 176 Mich App 95, 105; 439 NW2d 285 (1989), citing *Butler v Butler*, 356 Mich 607, 618; 97 NW2d 67 (1959).

The trial court had full authority to enforce not only the October 21, 2002 order, but also the corresponding preliminary injunction. The trial court had ruled that the October 21, 2002 order could not be revisited until the appellate issue was finalized or the parties could stipulate to having the issue decided. The preliminary injunction further required that the subject property not be encumbered or transferred in a manner that would impair plaintiff's interest in the subject property until after the final adjudication of this action. The sheriff's sale that included the subject property took place on February 28, 2003, was a transfer of property that would impair plaintiff's interest while *his* appeal was still pending in this Court. Moreover, there was also a pending motion to clarify the court's order. Clearly, the issue was not resolved on the date of the sheriff's sale.

The trial court was withholding its ruling until either this Court ruled or the parties stipulated that it was proper for the trial court, pursuant to a motion, to clarify its previous order once the appellate process concluded. “Circuit courts have jurisdiction and power to make any order proper to fully effectuate the circuit court’s jurisdiction and judgments.” MCL 600.611; *Maldonado v Ford Motor Co*, 476 Mich 372, 376; 719 NW2d 809 (2006). The trial court’s action of issuing the June 12, 2008, order was necessary to fully effectuate its October 21, 2002, order. The court did not err.

Defendants next argue that they were denied due process of law by the order enforcing the October 21, 2002 order. They maintain that they should have been served with any new allegations and given an opportunity to defend. Further, they contend that the trial court erred by making findings without any evidence to support the allegations. These arguments fail.

To be properly preserved for appellate review, an issue must be raised in and decided by the trial court. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). Defendants did not assert a due process claim in the trial court and therefore have not preserved this issue for appeal. We review unpreserved claims of constitutional error for outcome-determinative plain error. *In re Hildebrant*, 216 Mich App 384, 389; 548 NW2d 715 (1996).

In plaintiff’s motion to enforce the October 21, 2002 judgment, plaintiff outlined its allegations against defendants. Moreover, they included the pertinent evidence and exhibits. All parties were given an opportunity to respond to the motion and to present oral argument at the motion hearing. Defendants did not respond to plaintiff’s motion and brief prior to the hearing.

At the hearing, defendants presented their position, asserting that the 2003 sheriff’s sale was proper, that Lewis “dotted his i’s and crossed his t’s”, that there were no allegations that the sale had deficiencies, and that the time for redemption had lapsed. Defendants had an opportunity to be heard. That they failed to provide a written brief and failed to directly address plaintiff’s claims is not a court failing.

Finally, defendant argues that the redemption period expired and that plaintiff could no longer challenge the execution and sale of the property. We disagree. Defendants’ argument is premised on the fact that the February 28, 2003 sale was a valid and would trigger the redemption period. As discussed above, the trial court issued a preliminary injunction precluding the sale of the subject property until a final adjudication was reached in this case. On that basis alone, the sale was invalid. Also, there was record evidence that the sale violated MCL 600.6056 because more parcels of property were sold than necessary to satisfy the execution lien. Lewis purchased 28 parcels of property for \$157,610, whereas the 2001 writ of execution indicated that the amount owed was \$37,382.53 plus any future interest as of January 8, 2001. Again, this would invalidate the 2003 sale. Moreover, there was evidence presented at the 2008 hearing that Lewis did not pay the sheriff any bid amount in excess of the execution lien as required by law. Finally, although we need not reach this issue to properly dispose of this case, it is questionable whether the sale violated of an automatic stay based on the previous owner’s bankruptcy action.

The trial court's ruling to transfer the subject property to plaintiff was not error, but instead was a just result.

We affirm. As the prevailing party, plaintiff may tax costs. MCR 7.219.

/s/ Jane E. Markey

/s/ Brian K. Zahra

/s/ Elizabeth L. Gleicher